STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 20,898
	)	
Appeal of	)	

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Office of Vermont Health Access (OVHA) denying her request for prior approval under the Vermont Health Access Program (VHAP) for coverage of a hysterectomy. The issue is whether the petitioner's circumstances warrant coverage for such surgery within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a twenty-nine-year-old woman with a history of gynecological problems. She is requesting prior approval under VHAP for a hysterectomy. OVHA has denied this request because it feels a less invasive "LEEP" procedure is medically indicated. From the information provided it appears that LEEP involves a procedure that scrapes the uterus, but does not involve either surgery or long-term damage to the uterus.

2. The petitioner's medical problems, and treatment options, are described in the following report, dated June 27, 2007, from her treating nurse practitioner.

> I am writing on behalf of [petitioner]. [Petitioner] has been a patient at Planned Parenthood since 1994. I personally have seen her since February 2000. [Petitioner's] first abnormal pap smear was in May 2003. She has had dysplasia or precancerous changes since that time. At first these changes were mild (CIN I) and are now moderate to severe (CIN II/III) and have persisted over the past 4 years. [Petitioner] has had severe discomfort after the three colposcopies she has had. I referred [petitioner] to [doctor], ob/gym MD to evaluate this problem further and to decide on the best treatment plan for her.
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> I met with [petitioner] on April 9, 2007 after [doctor] had done the third colposcopy to discuss the treatment options that she had discussed with [doctor]. [Petitioner] was well informed about her options of LEEP versus hysterectomy. We discussed the benefits and risks of both options. [Petitioner] prefers the hysterectomy option because it would provide less chance of cervical dysplasia persisting. [Petitioner] states that she is very sure she does no longer want future pregnancies or children. Another advantage of hysterectomy for her is that it eliminates her need for birth control which has been challenging for her. [Petitioner] has tried two types of IUDs, which had to be removed because of pain and expulsion. She had an unplanned pregnancy on depo provera. She is currently on combined birth control pills which have been complicated by her history of migraine headaches.
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> [Petitioner] has presented as rationale [sic], level-headed, and informed about this choice.

3. The petitioner's ob/gyn physician (referred to in the above report) submitted the following report (also dated June 27, 2007) in the petitioner's behalf.

> As you are aware [petitioner] is in the process of appealing a denial for hysterectomy as treatment for persistent dysplasia. My last letter outlined her request for a definitive procedure (hysterectomy) in lieu of conservative treatment (LEEP). [Petitioner] is well aware of the pros and cons of both options, including the increased morbidity and permanent loss of fertility associated with hysterectomy. She is a very intelligent person who clearly understands the risks and benefits, and certainly has a good grasp of the pertinent issues. In other words, [petitioner] is a well informed patient able to make reasonable and rational decisions concerning her own health care. Since she believes it is in her best interest to undergo hysterectomy, I would support this decision. I remain available for any questions you may have.

4. In its denial of coverage for a hysterectomy OVHA emphasizes that the petitioner has not been diagnosed with cancer. OVHA interprets the above letter from the petitioner's ob/gyn as supporting the petitioner's *preference* for a hysterectomy, but not as a *medical recommendation* that she have one. There does not appear to be any dispute that a hysterectomy exceeds the accepted medical standard of care for individuals in the petitioner's situation, based on the permanent loss of reproductive function and the risk of complications and death that it entails.

5. Several status conferences have been held in this matter. As noted above by her care providers, the petitioner is an intelligent and well-informed individual. She is most concerned about her risk of cancer, and she fully understands

the relative pros and cons between a hysterectomy and a less-invasive LEEP procedure. Following the submission of the above reports from her providers, the matter was continued several weeks to allow the petitioner to provide evidence that her doctor was actually *recommending* that she undergo a hysterectomy, rather than supporting *her preference* for this procedure over LEEP. To date, no such evidence has been forthcoming.

6. Based on the record it is found that the petitioner's doctor, though fully supporting the petitioner's preference to have a hysterectomy, and believing that the petitioner is making a reasonable decision, does not actually feel that such a procedure is medically necessary or advisable under the circumstances.

ORDER

The Department's decision is affirmed.

REASONS

W.A.M. § M106.2 includes a provision that the Department, in its Provider Manual, will maintain a "complete and current list of all services and items. . . that require prior authorization". In this case there is no dispute that hysterectomies require prior approval. The regulations under

W.A.M. § M106.3 further provide that prior authorization determinations are governed, inter alia, by the following:

> A request for prior authorization of a covered health service will be approved if the health service:
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> 1. is medically necessary (see M107);
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> 2. is appropriate and effective to the medical needs of the beneficiary. . .
>
> 4. is the least expensive, appropriate health service available. . .
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> Supporting information for a prior authorization request must include a completed claim and a completed medical necessity form. Additional information that may be required includes. . .
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> - the practitioner's detailed and reasoned opinion in support of medical necessity;
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> - a statement of the alternatives considered and the provider's reasons for rejecting them; and,
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> - a statement of the practitioner's evaluation of alternatives suggested by the department and the provider's reasons for rejecting them. . .
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> "Medical necessity" is defined in § M107 as follows:
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> “Medically necessary” means health care services, including diagnostic testing, prevention services, and aftercare, that are appropriate, in terms of type, amount, frequency, level, setting, and duration to the beneficiary’s diagnosis or condition. Medically necessary care must be consistent with generally accepted practice parameters as recognized by health care providers in the same or similar general specialty as typically treat or manage the diagnosis or condition, and

1. help restore or maintain the beneficiary's health, or

2. prevent deterioration or palliate the beneficiary's condition; or

3. prevent the reasonably likely onset of a health problem or detect an incipient problem.

In this case, there is no dispute that a LEEP procedure would be considerably less expensive and invasive than a hysterectomy, and that a LEEP procedure is the "typically" prescribed treatment for individuals in the petitioner's situation. Despite his obvious support for the petitioner's request, the petitioner's doctor has not refuted OVHA's determinations regarding the medical necessity and appropriateness of a hysterectomy compared to a LEEP procedure for the petitioner. In short, there is no evidence that the petitioner's doctor disagrees with the *medical basis* of OVHA's rationale. If anything, his report (*supra*) indicates that he agrees with it.[1]

This case goes to the heart of the philosophical issues that underlie managed care. The petitioner's circumstances are certainly sympathetic, and there is nothing patently unreasonable about her preference for a hysterectomy.

[1] Although it is not clear that the petitioner's nurse practitioner necessarily shares this view, under the regulations it is clear that the prescribing doctor's opinions are controlling. *Id* § M106.3(10).

Clearly, her doctor could (and would) perform the procedure well within professional standards of care and practice based on the petitioner's informed decision. Unfortunately however, insurance coverage[2] is another matter. The regulations are clear that Medicaid and VHAP coverage depends on an objective assessment of medical necessity by medical professionals, not the preferences of the patient, however understandable and reasonable those preferences may be under the circumstances.

The key medical issue in this case is the lack of medical evidence or opinion that developing cancer is "reasonably likely" for the petitioner if she does not undergo a hysterectomy at this time. Despite the petitioner's understandable concerns, and her reasonable assessment of the relative pros and cons of a hysterectomy, there is no indication in the record that the petitioner's doctor, *from a medical standpoint*, disagrees with OVHA's assessment of the petitioner's situation.[3] Thus, OVHA's decision that the petitioner's request does not meet the

[2] The same issues might well apply if the petitioner were covered by private medical insurance.
[3] At any point that the petitioner could produce such evidence, she is free to reapply for coverage.

requirements of prior approval must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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